

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Cesar Chavez Foundation)	
)	
Application for Renewal of License of)	File No. BRED-20130723ABI
Station KUFW(FM), Woodlake, California)	Facility ID No.: 21210

MEMORANDUM OPINION AND ORDER

Adopted: March 11, 2019

Released: March 11, 2019

By the Commission:

1. The Commission has before it a Petition for Reconsideration (Petition) filed by David Hawe (Hawe)¹ on May 18, 2018.² Hawe challenges the Commission's dismissal in part and denial in part of the Application for Review (AFR) that he filed on August 29, 2016.³ The AFR challenged the Media Bureau's (Bureau) adoption of a Consent Decree (MB Consent Decree) between itself and Cesar Chavez Foundation (CCF),⁴ which addressed violations of the law and rules governing underwriting announcements⁵ (Underwriting Laws) at noncommercial educational (NCE) radio station KUFW(FM), Woodlake, California (Station). It also sought review of the Bureau's subsequent renewal of the Station's license.⁶ In the Petition before us now, Hawe argues that CCF has violated the terms of the MB Consent Decree by continuing to air commercials on the Station and includes a copy of a complaint that he concurrently filed with the Enforcement Bureau regarding the same content. Hawe also asserts that CCF violated the terms of the MB Consent Decree by failing to divest itself of the Station. He urges us to revoke the Consent Decree, rescind our grant of CCF's application to renew the Station's license, and designate that application for hearing.⁷

¹ The Petition was filed jointly by Hawe and Gerawan Farming Inc (Gerawan). The Commission previously found that Gerawan lacked standing to file its Application for Review and other pleadings jointly submitted by Hawe and Gerawan in this proceeding. *See Cesar Chavez Foundation*, Memorandum Opinion and Order, 33 FCC Rcd 4338 (2018), n.1 (*Order*). In the Petition, Gerawan does not challenge that finding nor does it provide any information as to how it was aggrieved or how its interests were adversely affected by the Commission's decision. 47 U.S.C. § 405(a); 47 CFR § 1.106(b)(1). Accordingly, we find that Gerawan lacks standing to file the Petition, and only Hawe is entitled to pursue the Petition. To avoid confusion, we refer to the Petition as filed by Hawe alone.

² CCF filed an Opposition to Petition for Reconsideration (Opposition) on May 30, 2018.

³ *Order* at para. 11.

⁴ *Cesar Chavez Foundation*, Order, 31 FCC Rcd 7578 (MB 2016) (*MB Consent Decree*).

⁵ 47 U.S.C. § 399b; 47 CFR § 73.503(d).

⁶ *Broadcast Actions*, Public Notice, Report No. 48807 (MB Aug. 26, 2016).

⁷ Petition at 1-2. While Hawe does not discuss it in the Petition, there is a second Consent Decree (EB Consent Decree) in place between CCF and the Enforcement Bureau. *Cesar Chavez Foundation*, Order, 33 FCC Rcd 899 (EB 2018). The EB Consent Decree resolved an Enforcement Bureau investigation into allegations made by Hawe in complaints filed with the Enforcement Bureau that underwriting violations occurred at the Station and another CCF station (KNAI-FM, Phoenix, Arizona) after the Bureau's adoption of the MB Consent Decree and its renewal of the Station's license.

2. With respect to the allegations set forth in the complaint as well as the evidence that Hawe submitted on May 18, 2018 and attached to his Petition, we conclude that CCF has neither violated the terms of the MB Consent Decree nor violated the Commission's rules (Rules).⁸ We base this conclusion on the fact that the Enforcement Bureau investigated the complaint and evidence that Hawe submitted,⁹ and determined that no further action was necessary.

3. The Underwriting Laws define prohibited advertisements as any programming material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product offered by any person who is *engaged in such offering for profit*."¹⁰ Section 399b(b)(2) of the Communications Act of 1934, as amended (Act), specifically provides that NCE stations may not broadcast advertisements.¹¹ The EB Consent Decree further proscribes CCF from airing any announcement on behalf of a for-profit entity, whether promotional or not, for a one-year exclusionary period.¹²

4. In the Petition, Hawe alleges that CCF continued to broadcast advertisements on the Station during the period March through April 2018 in violation of the Underwriting Laws and the MB Consent Decree. However, upon investigation, the Enforcement Bureau determined that the preponderance of evidence demonstrated that the announcements cited in the Petition were aired on behalf of non-profit entities, whose promotion is not prohibited by Section 399b of the Act.¹³ For this reason, the Enforcement Bureau concluded that CCF did not violate the Underwriting Laws (or the terms of the EB Consent Decree), and that no further action was warranted.

5. We also reject Hawe's argument that CCF failed to comply with the requirement that it divest the Station within six months of the Bureau's adoption of the Consent Decree. Hawe fails to acknowledge that CCF's obligation to divest is "subject to receiving any necessary prior Commission approval"¹⁴ or that CCF continues to wait for this approval. Specifically, on August 15, 2016, CCF filed an application (Assignment Application)¹⁵ to assign the Station's license to Educational Media Foundation (EMF) as part of a station swap in which EMF would receive the license for KUFW(FM) and

⁸ Having reached this conclusion, we need not reach the question of whether to invoke the provision of the Consent Decree that permits its revocation if CCF violates any condition of the decree or any of the Rules. See Petition at 2, citing *MB Consent Decree* at para. 14 ("To the extent that [CCF] fails to satisfy any condition or Commission Rules, in the absence of Commission alteration of the condition or Rule, it will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, revocation of this Consent Decree, designation of the matter for hearing, letters of admonishment and/or forfeitures.").

⁹ Petition at Exh. 1.

¹⁰ 47 U.S.C. § 399b(a) (emphasis added).

¹¹ 47 U.S.C. § 399b(b)(2).

¹² Cesar Chavez Foundation, Order, 33 FCC Rcd 899, 905, para. 10 (EB 2018).

¹³ Most of the contested announcements were for non-profit entities that either are registered in California or, in one instance, a federally recognized Indian Tribe. In addition, some announcements were self-sponsored messages promoting the station's own programming. Further, one announcement was on behalf of a foreign-based hospital. The Enforcement Bureau found that CCF acted with reasonable diligence in relying on its underwriter's advice that the hospital is a non-profit organization and gave weight to its use of the ".org" suffix on its website, which is common for non-profits. Moreover, when the hospital's status as a non-profit was challenged in the Petition, CCF stopped airing the hospital's announcements, not as an admission of their impropriety, but out of an abundance of caution.

¹⁴ *MB Consent Decree* at para. 13.

¹⁵ File No. BALED-20160815ABK. Hawe is aware of this, having filed a Petition to Deny the application on September 19, 2016.

CCF would receive the license for KVPW(FM), Kingsburg, California.¹⁶ The Assignment Application remains pending because Hawe has submitted complaints and other pleadings related to the Station, and the Bureau has held action on the Assignment Application until Commission and Enforcement Bureau decisions were complete.¹⁷

6. Finally, Hawe argues that the Consent Decree requires CCF to use “its best efforts” to obtain Commission approval for its divestiture of the Station, and CCF could have filed a license modification application necessary for CCF to operate KVPW(FM) as a commercial station earlier than it did. However, we do not believe it would be appropriate to base a finding that CCF has not used its “best efforts”—and thus has not complied with the divestiture requirement set forth in the Consent Decree—solely on that. We note that, concurrent with our decision today, the Bureau is granting the Assignment Application and remind CCF that, given the amount of time that has passed, we expect it to expeditiously consummate its divestiture of the Station.¹⁸

7. ACCORDINGLY, IT IS ORDERED that the Petition for Reconsideration filed by David Hawe on May 18, 2018, IS DENIED pursuant to Section 405 of the Communications Act of 1934, as amended, and Section 1.106 of the Commission’s rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁶ KVPW(FM) is a non-reserved band station. It currently operates as an NCE station but CCF proposes to operate it as a commercial radio station. EMF filed an application to assign the license for KVPW(FM) to CCF on August 16, 2016. File No. BALED-20160815ABJ. Hawe also filed a Petition to Deny this application on September 19, 2016.

¹⁷ Hawe filed the AFR on August 29, 2016. Consistent with Commission practices, the Bureau held action on the Assignment Application until Commission action on the AFR was complete. Action on the AFR, in turn, was withheld until the Enforcement Bureau could investigate complaints filed against the Station by Hawe in October 2016 and March 2017. *See supra* n. 7. The Enforcement Bureau resolved its investigation on February 1, 2018, when it entered into the EB Consent Decree. *Id.* The Commission acted on the AFR on April 17, 2018, and the Bureau began reviewing the Assignment Application. At that time, the Bureau determined that CCF needed to file a license modification application to convert KVPW(FM) from an NCE to a commercial station and requested that CCF file that application. *See* Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to Paul S. Park, Cesar Chavez Foundation (dated April 26, 2018). CCF filed the requested application on May 25, 2018. *See* File No. BMLH-20180525AAE. However, by that time, Hawe had filed a new complaint with the Enforcement Bureau and had filed the Petition. *See* Petition at Exh. 1. As a result, the Bureau again put its efforts on hold so that the Enforcement Bureau could complete an investigation into this new complaint and the Commission could act on the Petition.

¹⁸ *Cesar Chavez Foundation*, Letter Order (MB Mar. 11, 2019). The decision also grants the related EMF application to assign the license for KVPW(FM) to CCF.

¹⁹ 47 U.S.C. § 405; 47 CFR § 1.106.